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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,795	12/09/2003	Terry S. Bienstock	007412.00101	4949
71867 7590 06/09/2009 BANNER & WITCOFF, LTD ATTORNEYS FOR CLIENT NUMBER 007412 1100 13th STREET, N.W. SUITE 1200 WASHINGTON, DC 20005-4051				
EXAMINER				
PARRA, OMAR S				
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2421				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/731,795

Applicant(s)

BIENSTOCK, TERRY S.

Examiner

OMAR PARRA

Art Unit

2421

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/02)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/24/2009 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims **15-16 and 18-19** are rejected under 35 U.S.C. 102(e) as being anticipated by Kenworthy (Pub. No. 2004/0255333).

Regarding claims 15, 18 and 19 Kenworthy teaches an apparatus (with -
respective method) for signal distribution in a cable television network **(115, Fig. 3)**
comprising:

an interface that is configured to receive general local interest content from a first
source and to receive locally produced content from a second source **(308, Fig. 3**
receives the general local interest content from central aggregation headend
through interface 112 and locally produced content from local content providers
108 and 202, Fig. 3 through 107, 314 and 316; [0042]-[0043]); and

a processing module **(network management system, 402)** configured to be
connected to the interface and configured to perform:

providing a channel in a channel lineup for the local area in accordance with the
local franchising authority agreement **([0041]; [0047]; [0048]);**

providing backdrop programming on the channel, the backdrop programming
comprising the general local interest content from the first source **(the general local**
interest content from central aggregation headend through interface 112; [0022]-
[0024]; [0035]; [0038]);

determining an availability of the locally produced content from the second
source; and when the locally produced content is available and intended for local
broadcast, unconditionally preempting the backdrop programming and providing the
locally produced content on the channel to provide locally produced programming
against a backdrop of general local interest programming provided by the cable
television network **(Kenworthy teaches that the content produced locally (including**

content for local channels, advertising, video-on-demand, etc) is introduced to the received national bundle from the national headend ([0030]-[0032]; [0041]-[0044]). No charges are applied for the presentation of the locally produced content, given that the local headend is a regional affiliate ([0041]).

Regarding claim 15, Kenworthy teaches wherein:

the interface is configured to connect to a video on demand (VOD) platform , the VOD platform including a library of locally produced programming; and providing locally produced programming on demand with the VOD platform, the locally produced programming on demand being selectable by a subscriber ([0041]; [0045], **where being the content on demand for the user, it is inherent that the content is selectable by the user. Said content is stored at server 328, Fig. 3).**

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims **1-14** are rejected under 35 U.S.C. 103 (a) as being unpatentable over Hugenberg et al. (hereinafter 'Hugenberg', Pub. No. 2003/0140353) in view of Hane (Pub. No. 2006/0041921) in further view of Kenworthy (Pub. No. 2004/0255333).

Regarding claims 1 and 8, Hugenberg teaches that the method for a regular cable television network to provide public, educational and governmental (PEG) programming pursuant to an agreement with a local franchising authority for a local area providing a PEG channel in the channel lineup with respective backdrop programming for each local area as required by the corresponding local franchising authority agreement is well known in the art ([0003]; [0014]; [0036]-[0037]; [0042], **where PEG channels are well known in the art as being part of the cable television programming and where to function in a local area, permission from local authorities are inherently needed**). On the other hand, Hugenberg does not explicitly teach:

for each local area having a PEG channel, determining an availability of locally produced PEG programming; and

when locally produced PEG programming is available and intended for local broadcast in a particular local area having a PEG channel, preempting the backdrop programming and providing the locally produced PEG programming on the PEG channel in the particular local area thereby providing locally produced PEG programming against a backdrop of general local interest programming provided by the cable television network.

However, in an analogous art, Hane teaches a system and method for distributing national and locally produced content, where availability of local or regional content is checked and inserted to be presented to the users after a commitment of transmission (Abstract; [0050]-[0051]; [0057]-[0058]; [0067]-[0070]). The content is not

limited to ads as used in the cited example, but locally produced news updates, political content programs, data, etc ([0043]-[0045]; [0076]-[0078]). Additionally, Hane teaches that any person or entity is able to post content but after approval ([0043]-[0045];[0076]-[0078]; [0081]).

Therefore, it would have been obvious to an ordinary skilled in the art at the time of the invention to have modified the feature of Hugenberg's invention of collecting PEG content from the local areas and send it send it back with the rest of the content to respective local areas with Hane's feature of checking for locally produced content and insert it to the national content for the benefit of saving upload (when sending the content to the national facility) and download (sending national and regional content to local areas) bandwidth and for further serving a community with content that is closer to its interests (Hane: [0014]).

Additionally, although Hugenberg and Hane teach that other non-advertising content (video content or programming) can be presented to local public ([0077]), they do not explicitly teach that given presentation is unconditionally preempted.

However, in an analogous art, Kenworthy teaches a video content distribution system in which a national headend bundles all types of content (programming, advertisement, etc) and send them to multi-market locations (Abstract; [0022]-[0024]; [0035]; [0038]). This bundle of content includes material to be of general interest at all the markets. Kenworthy also teaches that the content produced locally (including content for local channels, advertising, video-on-demand, etc) is introduced to the received national bundle from the national headend ([0030]-[0032]; [0041]-[0044]). No

charges are applied for the presentation of the locally produced content, given that the local headend is a regional affiliate ([0041]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Hugenberg and Hane's invention with Kenworthy's unconditionally preempting local content to content received from a national headend for the benefit of presenting and promoting locally produced content of general interest to population in a given region or zone.

Regarding claims 2-4 and 9-11, the combined teachings of Hugenberg, Hane and Kenworthy teach PEG content to be created by local, educational and governmental public access to the cable television network (**Hugenberg: Local content for a PEG channel is collected from local producers, [0003]; [0014]; [0036]-[0037]; [0042]. Hane: Anyone outside the cable television network can pay for adding their content shown to the public through cable programming; which includes local, educational and governmental content creators, [0043]-[0045]; [0076]-[0078]).**

Regarding claims 5 and 12, the combined teachings of Hugenberg, Hane and Kenworthy teach wherein the same general local interest programming is provided on the PEG channels for multiple local areas (**Hugenberg: [0003]; [0014]; [0036]-[0037]; [0042]. Kenworthy: [0024]; [0038]).**

Regarding claims 6 and 13, the combined teachings of Hugenberg and Hane teach wherein the cable television network includes a video on demand (VOD) platform, the VOD platform including a library of locally produced PEG programming, the method further comprising providing locally produced PEG programming on demand with the VOD platform, wherein the locally produced PEG programming on demand is selectable by a subscriber **(Hane: The local content to be inserted to the cable programming can be on-demand, [0058]. All the local content is stored in local databases, [0058]. Kenworthy: [0041]; [0045], where being the content on demand for the user, it is inherent that the content is selectable by the user).**

Regarding claims 7 and 14, the combined teachings of Hugenberg and Hane teach wherein the cable television network includes a high speed data (HSD) platform, the HSD platform including a library of locally produced PEG programming, the method further comprising providing locally produced PEG programming on demand with the HSD platform **(20, Fig. 1; [0036]; [0043]; [0058]. All the local content is stored in local databases, [0058]. Kenworthy: [0041]; [0045], where being the content on demand for the user, it is inherent that the content is selectable by the user).**

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kenworthy (Pub. No. 2004/0255333) in view of Hane (Pub. No. 2006/0041921).

Regarding claim 17, Kenworthy teaches being connected to a high speed data (HSD) platform, the HSD platform including a library of locally produced programming ([0041]; **where all local content, including video-on-demand stored at server 328, Fig. 3, is connected to the fiber 'last mile' –which is a high speed data medium- that serves/connects subscribers from local headend; [0046];**

providing the locally produced programming on demand with the HSD platform, the locally produced programming on demand being selectable by a subscriber ([0041]; **where all local content, including video-on-demand stored at server 328, Fig. 3, is connected to the fiber 'last mile' –which is a high speed data medium- that serves/connects subscribers from local headend; [0046]. Additionally, being the content on the demand to the user, it is inherent that it is user selectable).**

On the other hand, Kenworthy does not explicitly teach that the programming is PEG content.

However, in an analogous art, Hane teaches a system and method for distributing national and locally produced content, where availability of local or regional content is checked and inserted to be presented to the users after a commitment of transmission (Abstract; [0050]-[0051]; [0057]-[0058]; [0067]-[0070]). The content is not limited to ads as used in the cited example, but locally produced news updates, political content programs, data, etc ([0043]-[0045]; [0076]-[0078]). Additionally, Hane teaches

that any person or entity is able to post content but after approval (((0043)-[0045];[0076]-[0078]; [0081])).

Therefore, it would have been obvious to an ordinary skilled in the art at the time of the invention to have modified the feature of Kenworthy's invention with Hane's feature of checking for locally produced content and insert it to the national content for the benefit of saving upload (when sending the content to the national facility) and download (sending national and regional content to local areas) bandwidth and for further serving a community with content that is closer to its interests (Hane: [0014]).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OMAR PARRA whose telephone number is (571)270-1449. The examiner can normally be reached on 9-6 PM (M-F, every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John W. Miller/
Supervisory Patent Examiner, Art Unit 2421

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